



Appendix XXIV, Fair Hearing and Interest List Options for MDCP Denials

You or your child is not eligible for the Medically Dependent Children Program (MDCP). The Texas Medicaid and Healthcare Partnership has found that you or your child does not meet the medical necessity requirement for MDCP. The attached Form H2065-D, Notification of Managed Care Program Services, lists the reasons for denial. You can also see the MDCP eligibility rules on pages 3-4 of this notice.

You can appeal this decision.

If you want to appeal the denial, you must ask for a fair hearing. To ask for a fair hearing, you can use the two-page request form on pages 5–6 of this notice or call the office phone number on the top-right corner of the attached Form H2065-D.

- You may be able to continue getting MDCP services during the fair hearing process. If you want services to continue during the fair hearing process, you must request a fair hearing within **10 business days** from the date of notice on the top-right corner of Form H2065-D or by the date your services will end (also on Form H2065-D), whichever is later. If you use the request form on pages 5–6 of this notice, make sure you check the box to continue services. If you call, tell us over the phone that you want services to continue.
- You have 90 days from the date on Form H2065-D to ask for a fair hearing.

A fair hearing is when a hearing officer who is not part of the Medicaid program reviews the decision to deny eligibility for services. If you ask for a fair hearing, it will be scheduled within 30 days. A packet of information will be mailed to you before the fair hearing.

- You can submit new facts about your case. You have the right to see any records and information that will be used.
- Fair hearings can last 30 minutes to four hours, depending on the issue. Most fair hearings are held by phone, but if you have good reason, you can ask for an in-person fair hearing.

- You can represent yourself or choose a relative, friend, lawyer, or someone else to represent you during the fair hearing. You will have to pay any fees they charge for representing you. To find out if there is free legal help in your area, call 2-1-1.
- You will get a written decision within 60 days of the date you requested a fair hearing. The decision will explain your right to have the case reviewed if you disagree with the outcome.

If you have questions about the fair hearing process, call an HHS ombudsman at 866-566-8989 or submit questions online at hhs.texas.gov/managed-care-help.

You have interest list options.

You can choose one or all of the following options:

- Move back to the top of the MDCP interest list to get a new assessment for MDCP. This is also called the first position option.
- Move up on another 1915(c) waiver program interest list, be added to the bottom of another 1915(c) waiver program interest list, or both.

MDCP First Position	Move Up On or Be Added to the Bottom of Another Interest List
<ol style="list-style-type: none"> 1. You must be under 21 years old. 2. You will be placed at the top of the MDCP interest list. 3. You will get a new assessment when an MDCP slot becomes available. 4. You can only ask for the first position option one time. 5. You can ask for a fair hearing and the first position option at the same time, but the fair hearing will happen first. <ol style="list-style-type: none"> a. You may be able to keep getting MDCP services during the fair hearing process. b. If you choose the first position option without requesting a fair hearing, your MDCP services will end. c. If you choose the first position option without having a fair 	<ol style="list-style-type: none"> 1. You can request to move up on or be added to the bottom of another interest list for these 1915(c) waiver programs: <ol style="list-style-type: none"> a. Community Living Assistance and Support Services (CLASS) b. Home and Community-based Services (HCS) c. Texas Home Living (TxHmL) d. Deaf Blind with Multiple Disabilities (DBMD) 2. To move up on a list, you must have already been on it before or be on it now. If you want to be added to another 1915(c) waiver program interest list, we will add you to the bottom. 3. If you ask to move up, we will change the request date for that program to

<p>hearing first, you must decline the fair hearing and request first position in writing. You cannot call to do this. You can use the form on pages 5–6 or write a letter.</p> <p>6. You have 120 days from the date on the top-right corner of Form H2065-D to request first position.</p>	<p>your MDCP request date, if it is earlier.</p> <p>4. You can ask for these options, the first position option and a fair hearing all at the same time.</p> <p>5. You have 120 days from the date on the top-right corner of Form H2065-D to request to move up on another 1915(c) waiver program interest list.</p>
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You can request the interest list options now or you can wait until after the fair hearing. You can also do all at the same time. Use the two-page form on pages 5–6 of this notice or call the number on the top-right corner of Form H2065-D to request an interest list option. If you have questions, call the phone number on the top-right corner of Form H2065-D.

You may apply for the Medicaid Buy-In for Children program.

You might be able to get the Medicaid Buy-In for Children (MBIC) program. MBIC offers low-cost Medicaid services to children with disabilities in families that make too much money to get Medicaid.

MBIC covers the same services as Medicaid, including long-term services and supports like nursing home care and personal care.

If you can get MBIC, you might have to make a monthly payment depending on your income and whether you have health insurance through your job.

Call or visit an HHSC benefits office. To find an office near you, call 2-1-1 (toll-free). 2-1-1 can also answer questions about the MBIC program. Select option 2.

You or your child was denied for MDCP because of the following eligibility rules.

To be eligible for MDCP, you must meet the medical necessity criteria for a nursing facility level of care. This means you must:

- Have a medical condition serious enough that your needs exceed the routine care an untrained person can provide.

- Require licensed nurse supervision, assessment, planning and intervention only available in an institution.

Medical or nursing services must be:

- Ordered by a doctor.
- Needed because of documented medical conditions.
- Provided by a registered or licensed vocational nurse.
- Provided directly or under the supervision of a licensed nurse in an institutional setting.
- Required on a regular basis.

You can find the MDCP eligibility criteria in the Texas Administrative Code at Title 1, Section 353.1155 and Title 26, Section 554.2401. It is available online at sos.state.tx.us/tac/index.shtml.

If you have questions about this notice, call HHSC at the phone number on the top-right corner of Form H2065-D.

You have rights.

If you believe you have been discriminated against because of race, color, national origin, age, sex, disability, political beliefs, or religion, you may file a complaint using the office address on the top-right corner of Form H2065-D or by writing to:

**Civil Rights Department
Health and Human Services
P.O. Box 149030
Austin, TX 78714-9030**

Fair Hearing and Interest List Request Form for MDCP Denials

You can fill out the following two-page form or call the phone number on the top-right corner of Form H2065-D to ask for a fair hearing, for the first-position option, to move up on or be added to the bottom of another 1915(c) waiver program interest list, or for all of these options.

More information on these options, including important timelines, can be found in the attached notice. If you use this form, use the enclosed pre-addressed postage-paid envelope to mail back this form.

Member Information *

Last Name:	First Name:
Parent or Guardian Last Name:	Parent or Guardian First Name:
Medicaid ID:	Phone Number:
Address:	

Legally Authorized Representative (LAR) Information *

Last Name:	First Name:
Phone Number:	
Address:	

Request a Fair Hearing

<input type="checkbox"/> I want a fair hearing.	
<input type="checkbox"/> I want my MDCP services to continue during the fair hearing process.	
_____	_____
Signature – Member, Parent, Guardian, or LAR	Date

Request First Position

I want to be placed at the top of the MDCP interest list to get a new assessment when a slot becomes available.

I understand that if I choose this option and a fair hearing, the fair hearing will happen first. I understand that if I don't ask for a fair hearing, my current MDCP services will end.

I understand that I will only receive first position and be assessed again for MDCP if I am under 21 years old.

Signature – Member, Parent, Guardian, or LAR

Date

Request to Move Up On or Be Added to the Bottom of Another Interest List

I want to **move up** on the following 1915(c) waiver program interest list(s):

__CLASS __HCS __TxHmL __DBMD

I want to **be added to the bottom** of the following 1915(c) waiver program interest list(s):

__CLASS __HCS __TxHmL __DBMD

Signature – Member, Parent, Guardian, or LAR

Date

***You must fill in these boxes.**

26 Tex. Admin. Code 554.2401 General Qualifications for Medical Necessity Determinations

Medical necessity is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for a medical necessity determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section.

(1) The individual must demonstrate a medical condition that:

(A) is of sufficient seriousness that the individual's needs exceed the routine care which may be given by an untrained person; and

(B) requires licensed nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical or nursing services that:

(A) are ordered by a physician;

(B) are dependent upon the individual's documented medical conditions;

(C) require the skills of a registered or licensed vocational nurse;

(D) are provided either directly by or under the supervision of a licensed nurse in an institutional setting; and

(E) are required on a regular basis.

Source Note: The provisions of this Section 554.2401 adopted to be effective Sept. 1, 2008, 33 TexReg 7264; transferred effective Jan. 15, 2021, as published in the Texas Register Dec. 11, 2020, 45 TexReg 8871